



# Adversary Proceedings

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## What is an Adversary Proceeding

Under the Bankruptcy Law most debts such as simple medical bills or open accounts are cancelled or “**Discharged**”.

A few debts are **never** Discharged such as recent income taxes, alimony for support and child support. There are others.

There are also a limited number of debts that may or may not be Discharged depending on the circumstances. The Bankruptcy Judge will decide whether these debts should be Discharged — if requested.

These potentially “**Non-dischargeable**” debts might include cases involving fraud, embezzlement or intentional damage to the property of another. The sale of mortgaged property is one of the most often encountered debts in this category. Certain kinds of debts related to a divorce fall into this middle category of debts that might be Non-dischargeable. Student loans fall into this middle category as well. There are others

Normally if the person owed the money (the “**Creditor**”) believes that their debt should **not** be Discharged, the Creditor must file a lawsuit against the debtor (“**Debtor**”) in the bankruptcy case. This lawsuit is called an “**Adversary Proceeding**”.

In some cases the **Debtor** is obligated to file the Adversary Proceeding. Student loans require the Debtor to initiate the Adversary Proceeding or the student loan will not be Discharged.

## The Complaint

The Adversary Proceeding is initiated by the lawyer for the Plaintiff filing a document (the “**Complaint**”) with the Bankruptcy Court. The Complaint must describe what the Defendant has done that is improper, the legal reason why the Plaintiff believes the debt should be Non-dischargeable and the amount of the debt.

An Adversary Proceeding is quite similar to a conventional lawsuit, but it is conducted in the United States Bankruptcy Court by the assigned Bankruptcy Judge (“**Judge**”).

## Location

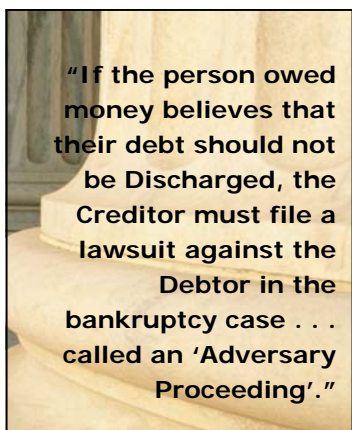
In the Western half of Oklahoma the Adversary Proceeding and all relevant court hearings are normally conducted in Oklahoma City.

The Bankruptcy Court for the Northeastern portion of Oklahoma is located in Tulsa where most of those hearings are held.

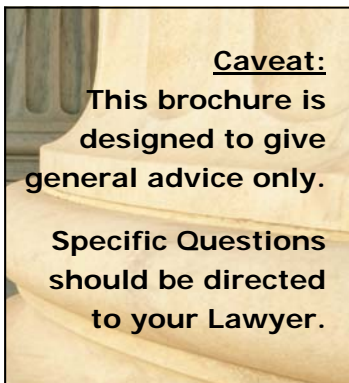
## The Parties

The persons involved in the Adversary Proceeding (the “**Parties**”) have the same titles as in a conventional lawsuit.

The person or company (normally the Creditor) that files the Adversary Proceeding is the “**Plaintiff**” and the Debtor is normally the “**Defendant**”. There are exceptions to this rule as in the case of student loans.



“If the person owed money believes that their debt should not be Discharged, the Creditor must file a lawsuit against the Debtor in the bankruptcy case . . . called an ‘Adversary Proceeding’.”



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## The Summons

All lawsuits require that the Defendant receive notice that he (or she) is being sued. This is required in an Adversary Proceeding and is customarily done by serving a “**Summons**” on the Defendant. The Summons must be properly served by restricted mail, a sheriff or process server.

Notice can be waived by the Defendant voluntarily entering an appearance in the Adversary Proceeding to save expense. This may be done by the attorney for the Defendant.

## The Answer

Once the Defendant is served with Summons, the Defendant must file a document within a short period of time setting out his defenses to the wrongs listed in the Complaint. This document is known as the “**Answer**”.

Defenses may range from a denial — “I didn’t do it” — to a bar by the statute of limitations.

Failure to file an Answer will result in a “**Default Judgment**” being taken against the Defendant.

Simply, the Plaintiff will get what he wants if the Defendant does nothing.

## Discovery

After the Answer is filed, the Parties will conduct “**Discovery**”.

Discovery is the process by which the Parties attempt to learn everything they can about the other Party’s case: Exactly what is the Plaintiff complaining about, why does the Defendant believe what he has done should be excused, who are the witnesses the Parties will use at Trial and the like.

Discovery also allows both sides to pin a witness or the other side down so that they cannot change their “story” later.

Discovery may involve a number of procedures or tools: Depositions, Interrogatories, Request to Admit and Requests to Produce are the ones most frequently used.

## Depositions

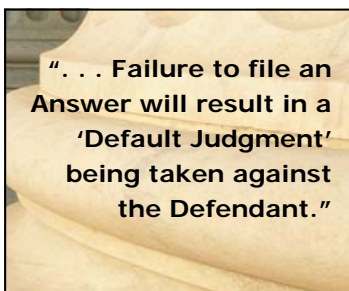
One of the most common Discovery tools is the “**Deposition**”.

Either Party can require the other Party or a third person (a “**Witness**”) to appear and answer questions under oath before a Court Reporter. The lawyers for the Parties can ask questions and the Court Reporter will transcribe the questions and sworn answers into a typewritten “**Transcript**” of the Deposition.

The Transcript may be used at the Trial or for other purposes.

Normally the lawyers for the Parties agree to reasonably convenient dates for Depositions; otherwise, either lawyer may issue a written notice requiring the other Party to appear for the Deposition which may be at an inconvenient time for the other Party.

Cooperation by the lawyers on scheduling Depositions and other kinds of Discovery is in the best interest of all concerned by saving time, inconvenience to the Parties and lawyers and saving money for the Parties.



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## Interrogatories

Either Party's lawyer may mail a list of written questions to the other Party which must be answered in writing within a specified period of time.

This Discovery tool is called "**Interrogatories**" and may be a useful and inexpensive method to gain information.

## Production of Documents

Yet another Discovery tool is the "**Request to Produce Documents**". Here one of the lawyers requests in writing that the other Party provide copies of documents in their possession.

These Requests normally seek documents that may be used to prepare for the Trial or in the Trial itself.

As with all Discovery, this tool is designed to ensure that a Party is not surprised at the Trial by the introduction of a document they did not know existed.

## Request to Admit

Occasionally the lawyer for a Party will ask the other Party to admit a fact about which there appears to be no dispute. This is done with a "**Request to Admit**". The Request to Admit must be denied within a set period of time or the facts involved will be deemed admitted.

## Motions

Before the Trial either Party may file a document with the Judge in an attempt to resolve some dispute. These documents are called "**Motions**".

Motions are highly varied. For example a Party may believe that there are no disputed facts and that he should prevail without a Trial. This Party will file a Motion for Summary Judgment.

The Judge will rule on these Motions.

## Scheduling Conference

Often in Adversary Proceedings the Judge will require the lawyers of the Parties to appear before him at a conference to develop a schedule of required actions and deadlines leading up to the Trial. This is called a "**Scheduling Conference**".

The Scheduling Conference is designed to make sure that the Trial will be conducted smoothly with as little delay as possible.

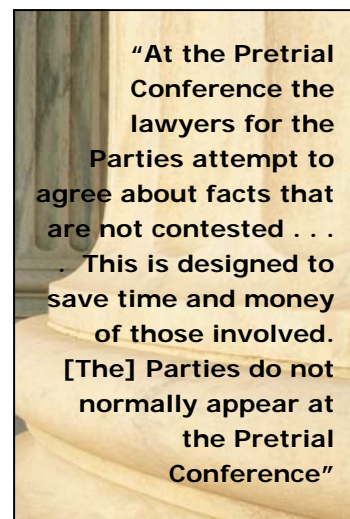
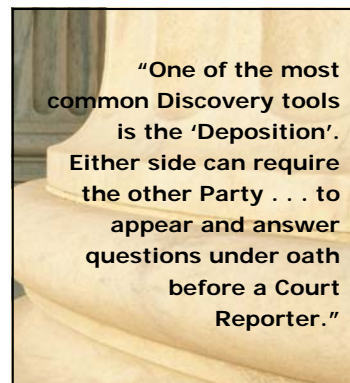
The Parties do not appear at the Scheduling Conference.

## Pretrial Conference

Shortly before the Trial the Judge may also require the lawyers of the Parties to appear before him for last minute coordination. This is called the "**Pretrial Conference**".

At the Pretrial Conference the lawyers for the Parties attempt to agree about facts that are not contested and agree on the exhibits that may be admitted without delay. Other areas of agreement are also explored. This is designed to save the time of those involved and the money of the Parties.

Again the Parties do not normally appear at the Pretrial Conference.



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## The Author

**Larry D. Lahman**, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School. He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and numerous other organizations.

He was a parachute officer with the U.S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the U.S. Army Reserves.

## Our Law Firm

P.C. Simons, who served as Attorney General of Oklahoma Territory, organized the predecessor to **Mitchell & DeClerck** in the early 1900's.

The Firm has been in continuous existence for nearly a century and is the oldest law firm in Enid, Oklahoma, while also one of the oldest law firms in the state of Oklahoma.

For decades the Firm has held the highest possible "A" rating by the Martindale-Hubbell Legal Directory. The Firm has long been listed in the "Bar Register" of preeminent law firms in the United States and "Best's Directory of Recommended Insurance Attorneys."

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## Settlement

Like all lawsuits Adversary Proceedings can be settled before the Trial and occasionally even after the Judge has rendered his Judgment.

Adversary Proceeding can be settled in many different ways ranging from payment of the sum involved, compromising on a lesser amount or other methods that can be discussed at the appropriate time.

## Trial

The actual hearing or "**Trial**" before the Judge is where the Parties submit their sides of the story to the Judge before he makes his decision.

The decision of the Judge is called the "**Judgment**" and is reduced to writing in the form of an Order, Journal Entry of Judgment or simply a Judgment.

Trials can be as short as an hour or so or in rare cases can take several days. The norm is a few hours.

Presently Trials in Adversary Proceedings in the Western half of Oklahoma will be held about a year after the case is filed.

## Appeals

After the Judge has rendered his decision following the Trial, either or both Parties may appeal the Judgment.

This is a complicated area that can be discussed if need be.

## The Cost

Legal fees will vary with the services required and are discussed during the initial conference.

Adversary Proceedings are typically rather expensive. Generally, the fee for a simple Adversary Proceeding will begin at \$5,000 plus postage, copying, travel, court reporter expenses, witness fees and court costs.

Lengthy and complicated Discovery and numerous Depositions will increase this figure.

Additional fees are charged for extensive negotiations, frequent conferences, complicated planning and advice, and court appearances other than those outlined above.